

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MARK ADAMCZYK,

Plaintiff,

vs.

NEW YORK STATE DEPARTMENT  
OF CORRECTIONAL SERVICES,

Defendant.

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**DEFENDANT'S**  
**ANSWER**

**07-CV-0523-WMS**

**ANSWER**

Defendant, New York State Department of Correctional Services ("DOCS"), by and through its attorney, Andrew M. Cuomo, Attorney General of the State of New York, Kim S. Murpy, Assistant Attorney General, of counsel, sets forth its Answer to Plaintiff's Complaint, as follows:

1. The allegations set forth in paragraphs 1, 2, and 3 are conclusions of law to which no responsive pleading is required.
2. Admits the allegations set forth in paragraphs 4, 5, 9, 12, 13, 15, 16, 17 and 27.
3. Admits the allegations in paragraphs 6, 7 and 8, although the referenced exhibits were not with the complaint.
4. In response to paragraph 10, admits that plaintiff became a Correction Lieutenant on December 27, 2001 and denies the remaining allegations.
5. In response to paragraph 11, admits that plaintiff was assigned to Wende Correctional Facility ("Wende") as a Correction Lieutenant on December 15, 2003 and denies the remaining allegations.

6. Denies the allegations set forth in paragraphs 14, 18, 19, 21, 23, 24, 26, 28, 29, 31, 32, 33, 35, 36 and 37.

7. In response to paragraph 20, refers to plaintiff's December 1, 2004 memorandum to Wende Superintendent Anthony Zon, which was not served with the complaint, the content of which speaks for itself, and denies plaintiff's mis-characterization of that memorandum.

8. In response to paragraphs 21 and 22, admits that plaintiff was served with a Notice of Discipline on October 14, 2005 indicating DOCS' intention to terminate plaintiff's employment for insubordination and false testimony, the content of which speaks for itself, and denies the remaining allegations.

9. In response to paragraph 25, admits that plaintiff gave false testimony to the Inspector General's representative on October 7, 2005 with respect to the September 22, 2005 incident, and denies the remaining allegations.

10. In response to paragraphs 30 and 34, answers the allegations the same as its answers to the individual allegations referred to in the complaint.

11. Denies each and every allegation not admitted, denied, or otherwise responded to above, except insofar as such allegation constitutes an admission against plaintiff.

### **GENERAL SUBSTANTIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

12. The complaint fails, in whole or in part, to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

13. Plaintiff's complaint, in whole or in part, fails to state a claim pursuant to Mt. Healthy School District v. Doyle, 429 U.S. 274 (1997).

**THIRD AFFIRMATIVE DEFENSE**

14. This action is barred, in whole or in part, by the Eleventh Amendment to the United States Constitution.

**DISCRIMINATION CASES**

**FOURTH AFFIRMATIVE DEFENSE**

15. This action is barred, in whole or in part, to the extent of plaintiff's failure to exhaust his state and/or administrative remedies.

**FIFTH AFFIRMATIVE DEFENSE**

16. Plaintiff unreasonably failed to take advantage of the preventive and corrective opportunities provided by the defendants. Faragher v. City of Boca Ratan, 524 U.S. 775,(1998).

**SIXTH AFFIRMATIVE DEFENSE**

17. Plaintiff's damages, if any, were caused by plaintiff's actions or inactions and plaintiff's failure to avoid or mitigate those damages.

**DEMAND FOR JURY TRIAL**

18. Defendant demands trial by jury.

**WHEREFORE**, defendant prays that judgment be entered in its favor, dismissing plaintiff's complaint in all respects, with prejudice, and that defendant be awarded reasonable costs and attorneys' fees, along with such other and further relief as may be just, proper, and equitable.

**DATED:** Buffalo, New York  
October 1, 2007

**ANDREW M. CUOMO**  
**Attorney General of the**  
**State of New York**  
**Attorney for Defendants**  
**BY:**  
**s/Kim S. Murphy**  
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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2007, I electronically filed the foregoing Answer with the Clerk of the District Court using its CM/ECF system which would then electronically notify the following CM/ECF participant in this case:

Richard H. Wyssling, Esq.  
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